In re MUNIANDY.

[A. Cr. J. (Spenser Wilkinson, J.) June 28, 1954]

[Penang — Criminal Revision No. 25 of 1954]

Road Traffic — Motor Vehicles (Driving Offences) Proclamation, s. 3(1) — Motor Vehicles Third Party Risks Regulations, reg. 3(1) — Disqualification — Special reasons.

The accused had been convicted on a charge of permitting a motor cycle to be ridden without an insurance policy contrary to reg. 3(1) of the Motor Vehicles Third Party Risks Regulations. The learned Magistrate held that the licence of the accused should not be confiscated as he was a motor mechanic and required to test vehicles and motor cycles.

Held: (1) Magistrates do not have an unfettered discretion in imposing the penalty of disqualification and must *prima facie* impose it in all cases, to which the penalty applies unless the Court for special reasons think fit to order otherwise; (2) there were no special reasons in this case and therefore the learned Magistrate should impose a period of disqualification.

Cases referred to:—

(1) *Public Prosecutor v. Karthiah* (1953) M.L.J. 52.

(2) *Rex v. Lim Kian Soo* (1950) M.L.J. 181.

(3) *Knowler v. Rennison* (1947) 1 K.B. 488 at 506.

CRIMINAL REVISION.

Spenser Wilkinson, J.: — The accused in this case was charged with employing one Ellapan to ride a motor cycle without a driving licence, contrary to section 3(1) of the Motor Vehicles (Driving Offences) Proclamation and with permitting the said vehicle to be ridden by Ellapan without an insurance policy, contrary to Regulation 3(1) of the Motor Vehicles Third Party Risks Regulations.

In the course of the hearing of the revision the accused stated that the said Ellapan was a friend of his and that he had never employed him and that he had understood that he had been charged with permitting Ellapan to drive the motor cycle. Under the present Regulations permitting a person to drive a motor vehicle is not an offence, and if in fact Ellapan was not employed by the accused no offence was committed as charged in the first charge and he should have been acquitted.

I therefore ordered a retrial in respect of the first charge. No doubt if the prosecution are satisfied that Ellapan was not an employee of the accused they will withdraw the charge.

With regard to the second charge, however, more difficult considerations arise. The learned Magistrate had stated that in his opinion in view of the accused's trade as a motor mechanic he is required to test vehicles and motor cycles his licence in this instance should not be confiscated.

I must draw the attention of Magistrates, as I have done before, to the decision of the High Court in the case of *Public Prosecutor v. M. Karthiah*[1].

My attention was directed by Counsel in the Criminal Revision heard immediately before this one to the case of *Rex v. Lim Kian Soo*[2] which is the majority decision of a Court of three Judges in Singapore. For the reasons I have given in that Criminal Revision (No. 28 of 1954) I feel bound by the decision in *Karthiah's*[1] case.

As there still seems to be some confusion in the minds of Magistrates upon this question of disqualification under Regulation 3 of the Motor Vehicles Third Party Risks Regulations and under section 6(2) of the Motor Vehicles (Driving Offences) Proclamation I feel I cannot do better than quote from the judgment of the Lord Chief Justice in the case of *Knowler v. Rennison*[3]:—

"It must be understood that disqualification is part of the punishment which Parliament has prescribed for certain motoring offences. Everyone will agree that certainly where a fine and not imprisonment is imposed, it is the most serious part of the punishment. That it often inflicts hardship, and in many cases grievous hardships, none will deny. But it is the punishment which Parliament has ordained, and moreover has enacted that *prima facie*, at least, it is to be imposed in all cases to which this penalty applies. There are in the statute-book laws which in terms allow the Courts to take, or refrain from taking, steps on the ground of exceptional hardship, but there is no such provision in the Road Traffic Acts. This Court has already laid down that financial hardship is not a matter which can be taken into account in this respect, and we desire to emphasize that this applies to any other form of hardship. It may often be distasteful to a Court to impose a penalty, or to take a certain course which it may think is disproportionate to the offence, but it is not for them to question what the legislature has enacted. .....
It is the duty of all Courts to apply the law as enacted and as interpreted by the Courts."

In the present case there is to my mind no doubt that the accused, as a result of the disqualification, will suffer hardship which may appear to be out of all proportion to the gravity of the offence which he committed. On the other hand the very great hardship which innocent persons may suffer through being injured by someone driving an uninsured vehicle must not be overlooked, and unless and until the legislature sees fit to alter the law the Courts must enforce it.

For the above reasons the order of the learned Magistrate refraining from imposing disqualification had to be varied and I ordered that the accused be disqualified from holding a driving licence for a period of twelve months from the date of conviction, namely the 21st May, 1954.

As it seemed probable that the learned Magistrate would have imposed a lesser fine had he to decide to disqualify I set aside the sentence of a fine and remitted this charge also to the learned Magistrate to impose such lesser fine as he considered right in view of the order of disqualification.